

(2006) 04 AHC CK 0264

Allahabad High Court

Case No: C.M.W.P. No's. 4856 and 5599 of 1987

Smt. Raj Kumari

APPELLANT

Vs

IInd A.D.J. and Others

RESPONDENT

Date of Decision: April 25, 2006

Acts Referred:

- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 21

Citation: (2006) 4 AWC 3383

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Advocate: J.J. Munir, Prakash Chand, R.K. Mishra and J.S. Baghel, for the Appellant; C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

S.U. Khan, J.

Both these writ petitions have been filed by the tenants against the same judgments and orders passed against them by the prescribed authority as well as appellate court in proceedings for release of accommodation in dispute (shop No. 349 Sadar Bazar, Jhansi) on the ground of bona fide need u/s 21 of U.P. Act No. 13 of 1972 initiated by original landlord respondent No. 3 Radha Kishan Agarwal. The release application was registered as Case No. 88 of 1984 on the file of Prescribed Authority/Munsif I, Jhansi. Release application was allowed on 19.4.1985. Against the said judgment and order tenants/petitioners of second writ petition filed R.C. Appeal No. 30 of 1985. Appeal was dismissed by IInd Additional District Judge, Jhansi, through judgment and order dated 21.2.1987, hence these writ petitions.

2. Initially Gulab Chand was the original tenant and after his death Prem Chand became the tenant. When release application was filed Prem Chand had also died. In the release application sons, wife and daughters of Prem Chand were impleaded

as opposite parties. Release application was contested only by the sons and widow of Prem Chand who are petitioners in the second writ petition and who alone had filed appeal. Raj Kumari one of the daughters of late Prem Chand who was also one of the opposite parties in the release application filed an application before the appellate court in R.C. Appeal No. 30 of 1985 stating therein that she was not served before the prescribed authority. Appellate court thoroughly disbelieved the said version and held that she was properly served. In any case her brothers and mother fully protected the Interest of all the tenants. They contested the proceedings tooth and nail and it cannot be said that they ignored interest of Raj Kumari. There is absolutely no fault in the order of the appellate court contained in its judgment rejecting the application of the Raj Kumari. First writ petition, which is directed against the said part of the judgment of appellate court, is therefore, dismissed.

3. In the release application, it was stated by the original landlord Radha Kishan Agarwal that he required the shop in dispute to settle his son Ashok Kumar in business of selling paints and hardware. The shop in dispute is quite big. Its frontage is about 27 feet. At the time of filing of the release application, Ashok Kumar was aged about 40 years. The tenant asserted that Ashok Kumar was doing business from another shop in the name and style of Bundela Store. Landlord asserted that in the said shop his other son Deepak was doing business. It appears that in respect of the said shop initially in some Government records the owner was shown to be Ashok Kumar. However, in the year 1979 (12.4.1979) the name was got corrected and it was shown that Deepak Kumar was owner of the said business. Both the courts below held that Bundela Stores exclusively belonged to Deepak Kumar. In any case both the sons of the landlord deserved separate independent business and need for the said purpose was quite bona fide vide [Mohinder Lal Vs. Smt. Saroj Kumari Verma](#), Even if it is assumed that both the brothers were doing business from Bundela Stores, one more shop was required by the landlord to settle one of the two sons in independent business. Business by the name of Bundela Stores is situate in half portion of shop No. 350 Sadar Bazar, Jhansi and rest half is in tenancy occupation of other tenant. Categorical finding in this regard has been recorded by both the courts below.

4. Tenant also asserted that another property bearing No. 158/3 situate In Jokhan Bagh belonged to the landlord and It contained two shops one of which had been let out to Sitapur Optical in 1981 and another to Diesel Spares in 1978. Landlord asserted and courts below accepted that Jokhan Bagh was not suitable for paints or hardware business and shop in dispute which is situate in Sadar Bazar, Jhansi was quite big in area and was more suitable for the aforesaid business. The Supreme Court in [Chandrika Prasad \(D\) Thr. Lrs. and Another Vs. Umesh Kumar Verma and Others](#), has held that availability of shop in less conspicuous and less important area is no ground to reject the release application in respect of shop which is situate in a commercially more important area and on main road. It has been stated in counter-affidavit that landlord has sold the property in Jokhan Bagh In 1995.

5. In respect of comparative hardship courts below held that tenant was not doing any substantial business from the shop in dispute and according to sales record filed before the courts below, the income of the tenants from the shop in dispute was shown to be only about Rs. 3,000 per year. It was also found by the courts below that tenants were doing thekedari business and that they had two houses numbered as 24A and 80 and that tenants were also doing the business of thekedari therefrom. It was also found that both the houses of the tenants were situate in that very locality in which shop in dispute was situate, i.e., Sadar Bazar, Jhansi and house No. 24A was on the road. It was also found that tenants did not make any efforts to search alternative accommodation after filing of the release application.

6. In view of the above both the courts below decided the question of bona fide need and comparative hardship in favour of the landlord. I do not find least error in the said findings.

7. However during pendency of writ petition some subsequent developments have taken place, which have been brought on record through affidavits. It has been stated in the supplementary-affidavit filed on behalf of the tenant that a hotel and four shops have been constructed by the landlords in 1995-96 and a party garden has also been constructed. In the counter-affidavit, it has been stated that Ashok Kumar has got two sons aged about 30 years and 28 years and Deepak Agarwal has got one son aged about 22 years and Smt. Uma widowed sister of Ashok Kumar is having two sons aged about 35 and 30 years and that another widowed sister of the landlord Ashok Kumar, i.e., Smt. Renu Agarwal has got one son aged about 22 years and the hotel and the shops have been constructed for these adult male members. Construction of any party garden has been denied. If during pendency of proceedings fresh need comes into existence and to satisfy the same, fresh constructions are made by the landlord, Initial need cannot be said to have been satisfied. In the counter-affidavit it has also been alleged that tenant has got nine shops in his house numbered as 24A Sadar Bazar, Jhansi, photographs of the said shops have also been filed. However, the tenant has denied the said assertion.

8. In view of this, I am of the opinion that the subsequent development of construction of commercial building by the landlord does not mitigate the initial need found by the courts below. Subsequent construction is for subsequent need. Release application was filed 22 years before (in 1984) and this writ petition itself is pending for 19 years. Those male members of the family who were either infants or children at the time of filing of the release application have become major and grown up during this period of about 20 years and they also require accommodation to do business.

9. Accordingly there is no merit in the writ petition hence it is dismissed.

10. Tenant-petitioners are granted six months time to vacate provided that:

(1) Within one month from today they file an undertaking before the prescribed authority to the effect that on or before the expiry of period of six months they will willingly vacate and handover possession of the property in dispute to the landlord-respondent.

(2) For this period of six months, which has been granted to the petitioners to vacate they are required to pay Rs. 3,000 (at the rate of Rs. 500 per month) as damages for use and occupation. This amount shall also be deposited within one month before the prescribed authority and shall immediately be paid to the landlord-respondent.

11. It is further directed that In case undertaking is not filed or amount of Rs. 3,000 is not deposited within one month then tenant petitioners shall be liable to pay damages at the rate of Rs. 2,000 per month since after one month till the date of actual vacation.

12. Similarly, if after filing the aforesaid undertaking and deposit of Rs. 3,000 the property in dispute is not vacated on or before six months then damages for use and occupation shall be payable at the rate of Rs. 2,000 per month since after six months till actual vacation.